

RESEARCH ARTICLE

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**ARTICLE 370: ANALYTICAL STUDY OF THE HISTORICITY OF A
CONSTITUTIONAL PROVISION**

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ABSTRACT

The Indian constitution's drafting committee was determined to make the country autonomous and diplomatic, as well as to protect people's human rights. Constitutional provisions have been crucial in bringing the country's legal system up to speed in order to deal with the country's current tough reality. The future of our parliamentary system has been ensured as a consequence of updating or new constitutional provisions. However, the unclear Article 370 granted the state of Jammu and Kashmir great self-sufficiency, causing a slew of difficult problems as well as a possible danger to the country's unity. This paper briefly explains the background of Article 370 of Jammu and Kashmir, analyzes the typical case of Jammu and Kashmir's accession to India, to study the working of article 370 and to discuss the eventual abolition of Article 370.

KEY WORDS: Article 370, Human Rights, Analytical study, Constitution, Overview, constitutional debates, political accession, and eventual abolition

INTRODUCTION

The Indian constitution is one of our country's most important legal documents, containing all features required to maintain social solidity, defend human rights, and save humankind from significant crime. When we look at global and national security issues with concentration on Jammu and Kashmir on the Indo-Pak border, we can see that it is the world's most dangerous territory, with major complicated issues only then can it be resolved by implementing new laws to assure safety and peace. Intrusion from Pakistan in Jammu and Kashmir, as well as more recently from China in response to the coronavirus outbreak, as well as an attack in the Ladakh region, are

all major factors complicating the situation. The goal is to build a peaceful and prosperous future relationship.

For decades, Jammu and Kashmir residents have been subjected to a great deal of dread and anxiety, and they have been struggling for their freedom in the face of their discomfort and unhappiness. After gaining independence from the British in 1947, India and Pakistan separated as two different countries based on the religion. At the time, British India had over 560 princely states, and Kashmir was one among them. Instead of royalty, Kashmir's ruler Hari Singh has created numerous wars, which have become the most contentious grounds for Kashmir's stability. Kashmir was used as a vicious weapon by Pakistan against India and attacked Kashmir with military soldiers. Because the Maharaja of Kashmir was unable to protect his kingdom, he sought assistance and extended his hand to India. After studying the situation in Kashmir and responding to Hari Singh's request, Viceroy Mountbatten presented to assist Kashmir in replace for the Maharaja signing the "Letter of Instrument of Accession to India," which has continued to remain an irreparable and unsettled issue for India ever since.

Pandit Nehru promised that "Kashmir's destiny shall be decided by plebiscite" after India-Kashmir agreement on November 2, 1947. However, no plebiscite has been held in Kashmir since then, and the Indian government's pledge has become a hazy one. Kashmiris were protected as a result of this occurrence, and guaranteed voting rights in local and general elections. As a result, the state did not require a plebiscite. Pakistan, on the other hand, has long argued for elections that are similar to referendums. On a regular basis, they have incited Kashmiri Muslims to fight for their rights and a state-wide referendum and said that Kashmiri people's vote will have minimal impact on the state because all they want is basic services and a solution to the conflict.

At last, The Jammu and Kashmir Reorganizations Act, Registered No. ID (N) 04/0007/2003, which has been published by Ministry of Law and Justice 2019, New Delhi, India, addresses the extremely difficult situations of Kashmir and the repeal of Article 370: peace is possible, or future India-Pakistan relations will be suffocated by the deadlock. The author emphasises the constitutional issue with the Indian government, focusing on Kashmir's history, current developments, and US policy, according to the Congressional Research Service. Jammu & Kashmir, a Muslim-majority state, has the power to reform. The author emphasises Article 370 of the constitution, which grants Jammu and Kashmir "special status" and divides it from the rest of

the country as "union territories," resulting in serious issues such as war, religious instability, military action of both countries, and future suffocation of national and international relations between the UN, India, Pakistan, and other neighboring countries. According to the United Nations, Jammu and Kashmir is a disputed region, while India has dismissed recent constitutional revisions as a "internal problem." The United Nations policy's purpose is to keep India and Pakistan from fighting each other and focuses on the obstacles that have arisen as a result of three decades of separatist conflict, as well as the myriad issues that have arisen as a result of that struggle. With President Trump's July "mediation" offer, the US has vowed to continue to help both sides of the India-Pakistan alliance in order to sustain peace and progress in the future. Maharaja Hari Singh of Jammu and Kashmir, according to the historical setting of this article 370 was assassinated by Pakistan on October 26, 1947, just after the significant states of Jammu and Kashmir joined India. Kashmir has had a constitution since November 17, 1956, when the Indian constitution's provision article 370 went into effect. Accession documents were signed by Maharaja Hari Singh on October 26, 1947 and the state became a part of India. Signed legal paperwork (accession papers) granting India permission to enter the state on October 26, 1947. They also emphasised "THE LEGAL ANALYSIS," which focused on Article 370 Clauses (1)(a), (1)(b), (1)(c), (1)(d), (2), and (3), as well as the existing legal framework of Article 370, as well as concerns, difficulties, and solutions for India's future peaceful scenarios. "Can the President Act Without Official Recommendation Under Constituent Assembly Constitutional Rights?" "The Abrogation of Article 370: Can the President Act without Official Recommendation under Constituent Assembly Constitutional Rights?" reads the title of his research paper. There are several problems with this. He discusses the provision and its history, as well as legal challenges to article 370, proper characterization of article 370 in court decisions, basic structural theory, and parliament's power to change article 370 using the in-depth framework. In the Indian constitution, this article is classified as unequal federalism, bureaucratic constraints on amending power, ARTICLE 370, and interim constitutionalism. Article 370 cannot be repealed without a written recommendation based on the constituent assembly's constitutional rights. The President of India has the power to change or repeal Article 370 of the Indian Constitution by issuing an official notification in the Official Gazette. He must first acquire the State Governor's approval before taking such action. Under Article 370, petitioners, claims, and complaints are all appropriately registered as a complicated

problem are the numbers. Jammu & Kashmir is both the epicentre and the source of simmering problems as a result of Pakistan and India's intervention.

For many years, Kashmir has been plagued by an atmosphere of terror and strife, as a result of which lakhs of people have died and tens of millions have been deployed stationed in the valley owing to unwelcome occurrences. There was a lot of violence and terror-like situations on several occasions. Elections were held in vigilance of military and paramilitary force for safety purpose. In comparison to the valley's population, the military force is relatively substantial. Many unjust acts and disasters have been reported in relation to human rights breaches committed by the state's armed forces or army troops. Rapes, molestation, harassment, disappearances, and other crimes committed by armed troops stationed in the valley. Amnesty International and other organizations investigated such allegations of human rights violations however; no such evidence was discovered or proved against the Indian army. They always emerged unscathed from such situations.

OBJECTIVES OF THE STUDY

1. To study the background of Indian constitution and Article 370.
2. To analyze the typical case of Jammu and Kashmir's accession to India.
3. To study the working of article 370.
4. To discuss the eventual abolition of Article 370.

REVIEW OF LITERATURE

A study conducted by (Kapoor, 2021) on "Abrogation of Article 370 of the Indian Constitution: An Analytical Study" explains The Indian constitution's architects were aimed to create a country which is sovereign, peaceful and defend peoples' human rights. Constitutional laws plays a critical role in maintaining the country's judicial system on the proper sequence for the purpose of the country's current realistic difficult situations, which results in up gradation of new constitutional laws. However, the contentious Article 370 granted the Jammu and Kashmir state vast autonomy, resulting in a slew of complex issues, including the threat to the country's unity. As a result, our government divided the state into two successor "Union Territories" along with limited aboriginal administrative powers under the Central Government. This item was a "Temporary Provision," and it was necessary to repeal, alter, and repeal it. Article 370 has a historical context that does not

originate from legal or constitutional aspects, but it does have complicated political and religious elements that have an influence on India-exceedingly Pakistan's complex international boundary issues. Since 1947, Pakistan's government has claimed control over J&K.

The current research article on “Historical Analysis of the Abrogation of Article 370” by (Paswal, Jafri, & Fatima, 2020) this article focuses on the Modi government's use of majoritarian authority to revoke Article 370 on August 5, 2019. The repeal of Article 370 was found to be in violation of the Indian Constitution's spirit, as well as humanitarian standards and democratic norms in general. This decision was also in violation of basic rights such as freedom of religion (articles 26-28), as because Jammu and Kashmir is the only majority Muslim country, the BJP government's targeting of one specific minority, with a Muslim population of roughly 67 percent. Since 1980, the objective of repealing Article 370 has been stated in the BJP's agenda. In 1947 India and Pakistan is got portioned then J&K became a provincially autonomous state that had previously been sold by the British government to Maharaja Gulab Singh for 7.5 million pounds. Unfortunately, Pakistan attacked Kashmir on August 20, 1947, shortly after partition. In order to defend himself, Maharaja Hari Singh requested assistance from India and subsequently briefly joined the Indian Union by signing the "Instrument of Accession." Because the political parties in J&K are completely responsible for the repeal of Art. 370, this study will examine their involvement critically. This research is a critical and theoretical examination of the myth and reality.

The research article by (Rather, Wani, & Suhrawardy, 2020) examines the state of Jammu and Kashmir's incorporation into the Indian Union through the “Instrument of Accession (1947)”, which was based on Article 370 of the Indian constitution. The state of Jammu and Kashmir was given unique priorities under Article 370 under India's quasi-federal politics, as envisioned in its constitution. It delves into the legal scenario and character of Article 370 of the Indian Constitution, as well as the real nature and meaning of Jammu and Kashmir's autonomy within the Indian Union. The researcher explains how gradually Indian Government seeks to change over last show how the Indian government has changed over seventy-four years. Without the permission of the constituent Assembly/Elected Government of Jammu and Kashmir, the United States unilaterally and arbitrarily repealed Article 370. This article also considers the social, economic, and political consequences of repealing “Article 370”. It also emphasizes the manipulative nature of the Indian government, which was once a champion of democratic ideas and methods.

K.Alan Kronstad: The author of this research report, according to Congressional Research Services, focuses on Kashmir, including its history, recent events, and US policies. Based on its constitutional competence to undertake reforms, the author focuses on the Indian government's role in J&K, which has a Muslim majority. "Article 370", which designates Jammu and Kashmir as a "special status" state and divides it from the rest of the country as "union territories," could put the state under "presidential rules" in the future, potentially causing severe issue such as peace or war, pious stability, Indian military strength, Pakistani invasion, and suffocating national and international relations between the UN, the US, India, and Pakistan. Jammu and Kashmir are officially recognised as a contested province by the United Nations, whereas India views the recent constitutional revisions as a "internal problem." With President Trump's "mediation" offer in July, the US pledged to support both sides of the India-Pakistan partnership in the future to promote peace and development.

The study by (singh, 2019) Article 370 was included into the Indian constitution as a transitory measure, according to the author. The current administration, which is behind Article 370, defies the constituent assembly's explicit proposal, which was made in conformity with the constituent assembly's constitutional powers. Dr. B.R. Ambedkar, according to the author, refused to create Art. 370 since it was unjust and excluded individuals under an independent India's constitution. Baba Saheb Ambedkar, the father of the Indian constitution, is opposed to Article 370. Article 370 (1), which once again requires "permission of" or "consultation with" the Indian state government, is invoked by the President of India. 370 (3) is no longer in effect, which has ramifications for future international relations as well as aggravating India's domestic issues, beginning with Jammu and Kashmir. In order to strengthen the article to make India more stable and peaceful Petitioners have asked the Supreme Court of India.

BACKGROUND INDIAN CONSTITUTION ARTICLE 370

In 1846, Maharaja Gulab Singh, a Dogra king signed the Treaty of Amritsar and purchased the province of Jammu & Kashmir from British Company. Pakistan was established as a Muslim-majority republic in August 1947, after India gained independence. Many princely states of India were not formally affiliated with either India or Pakistan, which given three options:

1. Remain independent.

2. Join one of the two countries.

Junagadh, Hyderabad, and J&K were the three yet uncertain cities. After home minister Sardar Vallabhabai Patel sought to persuade the hesitant princely states to join India, Maharaja Hari Singh signed a standstill agreement with Pakistan, effectively opting for the status quo. **(Paswal, Jafri, & Fatima, 2020)**

In October 1947 Army personnel's from Pakistan entered J&K, and Hari Singh recognized he needed Indian assistance which made him to approach Prime Minister Jawaharlal Nehru and Home Minister Sardar Patel, who agreed to deploy soldiers on the condition of sign of an instrument of accession (IOA) in India's favor, that the Maharaja sign relinquishing control of the country's military, foreign affairs, and communications. Indian forces went in after Hari Singh signed the IOA. The armed struggle, on the other hand, continues to this day.

Following India's independence, "Instrument of Accession" signed with the Indian Union on October 26, 1947 by Maharaja Hari Singh and the Parliament granted special status inside the Indian Union by adopting Article 306 on October 17, 1949, which was subsequently rescheduled as Article 370. The passage of Article 370 was only the beginning of the state's unique status. It was, in reality, the conclusion of a process that began in January 1927 and was affected by the Instrument of Accession as well as several national and international compulsions that occurred between October 26, 1947, and October 17, 1949.

Kanwar Dalip Singh was appointed as the Government of India's agent in J&K almost immediately after the Instrument of Accession was accepted. This was the first step toward the state's special status following India's independence. Another interesting thing to note is that when the Constituent Assembly of India was established, a number of states were granted representation from the start and were actively involved in the drafting of the Indian Constitution. But it wasn't until June 1949, when the Indian Constituent Assembly was nearing completion, that J&K was granted representation. On October 17, 1949, the Indian government finally agreed to its special status. All princely states that joined India were given special status, which they ultimately ceded and signed an Instrument of Merger, however J&K was never requested to sign the latter under Article 370 (at the time, 306) of the Indian Constitution. The provision of individual status to the state, on the other hand, has been one of the most contentious and divisive topics since then. This

article is regarded as a "Article of Faith" by the people of Kashmir Valley, as it ensured their internal autonomy and Kashmiri identity. **(Paswal, Jafri, & Fatima, 2020)**

As a result, it is critical to investigate the grounds on which the State was granted unique status. To begin with, the Indian leadership, with their devotion to democracy, never accepted that a single man, whether a Nizam or a Maharaja, should decide the fate of 468 states and their people. As a result, the people's will was given precedence above all other considerations. As a result, the accession of J&K, which was announced by Maharaja Hari Singh on October 26, 1947, could not be completed without first discerning the desire of the state's people. **(Paswal, Jafri, & Fatima, 2020)**

Furthermore, Pandit Nehru had spoken to his Pakistani counterpart about holding a vote within the United Nations Organization. However, the vote was unable to take place in the following years. As a result, special status was granted to J&K in order to find a way out. It is also a truth that, whereas all of India's other states freely joined the Indian Union soon after independence, J&K did not do so in the regular process, but rather three months later and under duress, after the state's military failed to repel Pakistani incursions. The Maharaja had to enlist the support of Indian forces to save his throne and Kashmiri identity. As a result, in October 2, 1947 the "Instrument of Accession" was signed. **(Paswal, Jafri, & Fatima, 2020)**

Another interesting thing to note is that practically all princely states that joined the Indian Union were required to sign the Instrument of Accession (like J&K). However, all of these states signed the Instrument of Merger with India either voluntarily or under public pressure, but J&K was never required to do so. To India, J&K was a distinguished visitor who had arrived later in unusual circumstances and hence deserved special accommodations in their new home. As a result, the Indian Parliament granted J&K special status on October 17, 1949, with the enactment of Article 370. Pandit Nehru was away at the time, and Home Minister Sardar Patel (who was also the Deputy Prime Minister) had declared, in response to Maulana Hasrat Mohani's persistent resistance, that the history of the ground realities in J&K required it having a distinct status. Since then, J&K has had a privileged position, and, more importantly, it has been able to reverse its steps toward total integration that it had gladly made in previous years. So, like Catalonia in Spain, this problematic state is now well integrated with the rest of the country, with its distinct character and autonomy carefully protected. **(Paswal, Jafri, & Fatima, 2020)**

JAMMU AND KASHMIR ACCESSION TO INDIA

The Rajya Sabha introduced the Jammu and Kashmir Redistribution Bill on August 6, 2019. As a result of this action, Jammu and Kashmir will end to exist as a state. Instead, Ladakh and Jammu & Kashmir would be separated into two union regions. The constitutional clause that guaranteed Kashmir's special status under the Indian Constitution was Article 370. Large number of armed tribesman attacked Kashmir On October 20, 1947 which made Hari Singh to demand military aid from India for that he wrote a letter to Governor General Lord Mountbatten. The letter asking aid included Singh's admittance papers to India, which he had signed. Mountbatten signed the agreement on October 27, 1947. Jammu and Kashmir constitution Act 1939 transfers only defense, external affairs, and communications to the Indian government, while the monarch would retain control over all other sectors. These requirements were specific to Kashmir's admittance to India, unlike the 565 original republics that had chosen to fully integrate with India. As a result, the constitution was amended to include Article 370 to safeguard the specific conditions under which Kashmir agreed to join India.(Article 370: A Short History of Kashmir's Accession to India, Accessed on 2022)

Working of Article 370

1. The state of Jammu and Kashmir is granted a transitory and one-of-a-kind provision under Article 370 of the Indian Constitution.
2. The chief drafter of India's constitution declined to include Article 370 because he believed it to be unconstitutional.
3. Sheikh Abdullah was assigned Nehru assigned him to work on this paper under the supervision of B.R. Ambedkar. Gopalaswami Ayyangar, on the other hand, was eventually in charge of preparing it.
4. When collective princely entities were reorganised, provisions of the absent state of Jammu and Kashmir were exempt from Article 238.
5. Part XXI of the Indian Constitution, headed "Temporary and Transitional Provisions," was used to construct Article 370.
6. The Accession Instrument contains the original draught of Article 370, which defines "the Government of the State" as "the person recognised by the President as the Maharaja of

Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated March 5, 1948."

7. Before making any significant decisions, parliament must seek the approval of the state government, according to this Article. 8. It is illegal for the Indian Parliament to reduce or expand the state's borders.
8. Article 370 of the Indian Constitution was renamed Article 306A at the time.
9. Non-residents are not entitled to transact land under the jurisdiction of the J&K, according to Article 370.
10. The change in constitution of Jammu and Kashmir has no authority to change.

Eventual abolition

On 2019 August 5 Reorganization Bill, 2019 was introduced by Home Minister Amit Shah of Jammu and Kashmir to rajyasabha which includes conversion of Jammu and Kashmir's status of a state to two separate union territories, which means

1. Union Territory of Jammu and Kashmir and
2. Union Territory of Ladakh.

According to law, the union territory of Ladakh would be denied one and Jammu and Kashmir would be given a legislature. This measure was taken in Rajya Sabha where 125 votes in favor and 61 votes against before the end of the day (67 percent). In the next day the was passed by the Lok Sabha with 370 votes in favor and 70 votes against (84 percent). After the President signed the measure, it became an Act. In the Rajya Sabha, Home Minister Amit Shah announced that the President of India had issued the Constitution Order, 2019 (C.O. 272), superseding the Constitution Order, 1954, under Article 370. The order said that Jammu and Kashmir was subject to the Indian Constitution's provisions. The 1954 directive, which stated that only some elements of the Indian constitution apply to the state, was repealed by the new order. In effect, this meant that the unique constitution of Jammu and Kashmir was annulled. With "the Government of the State of Jammu and Kashmir's approval," the President signed the order, signifying that the Governor was chosen by the Union government.(Paswal, Jafri, & Fatima, 2020)

Under "interpretations," the order of President 2019 inserted clause (4) with four sub-clauses to Article 367. "Sadar-i-Riyasat acting on the advice and assistance of the Council of Ministers" shall

be interpreted as "Governor of Jammu and Kashmir." The Governor is included in the term "state government." The word "Constituent Assembly of the State referred to in article (2)" should be replaced with "Legislative Assembly of the State" in the provision to clause (3) of Article 370 of the Constitution. Comparable situations since 1954 were present in orders of president under Article 370 when the state was under President's authority, according to Jill Cottrell. In these circumstances, the "concurrence of the state government" was taken by the Union government to imply the Governor. (Paswal, Jafri, & Fatima, 2020)

Amit Shah, Home Minister presented a motion in the Rajya Sabha shortly after the President's Order 2019 was tabled, urging that the President make an order under Article 370 (3) declaring all articles of Article 370 ineffective. Following both chambers of Parliament approved the resolution, the President issued Constitutional Order 273 on August 6, 2019, which replaced the existing text of Article 370 with the following:

“370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgment, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.”

CONCLUSION

The people of Jammu and Kashmir have been stripped of unique rights promised by Article 370 of India's constitution, and its withdrawal has ushered in political instability and the possibility of demographic shift in the state. The inhabitants of Jammu, Kashmir, and Ladakh lost their ethnic identity, employment, and property rights when Article 370 was repealed. Abolition of Article 370 results in propagation of one nation, one slogan, removal special status, reduction of terrorism and corruption, growth in trade and business, improved medical and educational facilities. The removal of article 370 as negative impacts which results in political vulnerability, insecurity. With all these positive and negative impacts people Jammu and Kashmir were hoping to lead a life with new horizon and positive ray of hopes regarding their growth in education, business and in many sectors with global recognition.

REFERENCES

BIBLIOGRAPHY

A, P. S. (2022, April 21). *The constituent Assembly Debates on Article 370*. Retrieved april 21, 2022, from https://www.scobserver.in/wp-content/uploads/2021/09/Sr.Adv_.Sanjay_Parikh-Reference_Propositions.pdf

Article 370: A Short History of Kashmir's Accession to India. (Accessed on 2022, Accessed on april Accessed on 12). *Article 370: A Short History of Kashmir's Accession to India* , 1-4. India.

Kapoor, T. (2021). Abrogation of Article 370 of the Indian Constitution: An Analytical study. *Global Journal of HUMAN-SOCIAL SCIENCE: F* , 21 (3), 22-33.

Neha, Varma Arora, D. R., Ajnat, D. S., Sampla, H. D., & Gautam. (2020). ABROGATION OF ARTICLE 370 OF THE INDIAN CONSTITUTION:AN ANALYTICAL STUDY. *International journal of creative research thoughts(IJCRT)* , 8 (8), 1881-1903.

Parikh, S. A. (Accessed on 2022, Accessed on Aprli Accessed on 21). *The constituent Assembly Debates on Article 370*. Retrieved April 21, 2022, from https://www.scobserver.in/wp-content/uploads/2021/09/Sr.Adv_.Sanjay_Parikh-Reference_Propositions.pdf

Paswal, N. H., Jafri, S. I., & Fatima, S. (2020). Historical Analysis of the Abrogation of Article 370. *Tathapi* , 19 (42), 156-163.

Rather, T. A., Wani, M. G., & Suhrawardy, B. M. (2020). Abrogation of Article 370 of the Constitution of India: Socio-Economic and Political Implications on Jammu and Kashmir. *International Journal off Research and Analytical Reviews(IJRAR)* , 7 (3), 501-517.

singh, D. A. (2019). Article 370- A permananetly temporary provision. *IJRAR* , 6.